

1 WATTS GUERRA LLP
Mikal C. Watts *pro hac vice*
2 Guy L. Watts II *pro hac vice*
Alicia D. O'Neill *pro hac vice*
3 Jon T. Givens *pro hac vice*
Paige Boldt, SBN 308772
4 70 Stony Point Road, Suite A
Santa Rosa, California 95401
5 Phone: (707) 241-4567
2561 California Park Drive, Suite 100
6 Chico, California 95928
Phone: (530) 240-6116
7 Email: mcwatts@wattsguerra.com

8 *Attorney for Numerous Wild Fire Claimants*

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

11 In re:

12 PG&E CORPORATION

13 - and -

14 PACIFIC GAS AND ELECTRIC
15 COMPANY,

16 Debtors.
17
18
19

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**OPPOSITION TO REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION FOR THE APPOINTMENT OF
AN EXAMINER OF VOTING
IRREGULARITIES PURSUANT TO
SECTION 1104(c) OF THE
BANKRUPTCY CODE AND
BANKRUPTCY RULE 2007.1**

- 20 ☐ Affects PG&E Corporation
21 ☐ Affects Pacific Gas and Electric Company
22 ☒ Affects both Debtors

23 * *All papers shall be filed in the Lead Case,*
24 *No. 19-30088 (DM).*

Date: June 4, 2020
Time: 9:30 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Docket No. 7776

25 TO THE COURT, ALL PARTIES, AND ALL ATTORNEYS OF RECORD

26
27 WATTS GUERRA LLP and its many wildfire clients, by and through their undersigned
28 counsel appearing *pro hac vice* in accordance with Doc. #7179, hereby respectfully file their

1 *Opposition to Request for Judicial Notice in Support of Motion for the Appointment of an Examiner*
2 *of Voting Irregularities Pursuant to Section 1104(c) of the Bankruptcy Code and Bankruptcy Rule*
3 *2007.1.*

4
5 **PROCEDURAL HISTORY**

6 Karen Gowins (“GOWINS”) filed her *Request for Judicial Notice in Support of Motion for*
7 *the Appointment of an Examiner of Voting Irregularities Pursuant to Section 1104(c) of the*
8 *Bankruptcy Code and Bankruptcy Rule 2007.1* (“Request for Judicial Notice”) on June 3, 2020, at
9 8:47:53 in the evening the night before the hearing on her *Motion for the Appointment of an*
10 *Examiner of Voting Irregularities Pursuant to Section 1104(c) of the Bankruptcy Code and*
11 *Bankruptcy Rule 2007.1* (“the Motion”).

12
13 Approximately twelve hours later, WATTS GUERRA hereby files its Opposition to
14 GOWIN’s Request for Judicial Notice.

15 **SUMMARY OF OPPOSITION**

16 WATTS GUERRA incorporates by reference its objections to the hearsay attached to the
17 Motion.

18 GOWINS now tries to avoid the hearsay rule via her Request for Judicial Notice. This is
19 not allowed under Bankruptcy Rule 9017, nor under Rule 201 of the Federal Rules of Evidence.
20 Importantly, application of those rules has caused both Bankruptcy Courts and federal courts in the
21 Northern District of California to almost uniformly refuse to take judicial notice of newspaper
22 articles as GOWINS requests here.

23
24 GOWINS has failed to meet her burden to show that this Court should take judicial notice
25 of this article under Rule 201, and the single case she cited is distinguishable and not supportive of
26 the judicial notice she seeks here.
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4
- 5
- 6

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

23

24
25

- 26
-
- 27
-
- 28

1 Fed. R. Evid. 201(b). *See also In re Reed v. Reed*, 293 B.R. 65, 69 (Bankr. D. Kan. 2003) (“Under
2 Fed. R. Evid. 201(b)(2), which is applicable in bankruptcy cases, see Bankruptcy Rule 9017, a
3 court may take judicial notice of facts that are not subject to reasonable dispute in that they are
4 ‘capable of accurate and ready determination by resort to sources whose accuracy cannot
5 reasonably be questioned.’”).
6

7 Because of the requirement of Rule 201(b)(2), bankruptcy courts have held that "Rule 201
8 of the Fed. Rules of Evidence does not allow the court to take judicial notice of the existence of
9 the article, nor of its contents." *In re Cast Entertainment, Inc. v. Guzman*, 2006 WL 3909930, at
10 *2 (Bankr. D. P.R., April 17, 2006). This is because “[a] distinction must be carefully drawn
11 between taking judicial notice of the existence of documents in the Court file as opposed to the
12 truth of the facts asserted in those documents.” *In re Snyder Farms, Inc.*, 83 B.R. at 986. Moreover,
13 authenticity of a newspaper article “does not automatically insure its introduction into evidence in
14 the face of other objections such as hearsay.” *Id.* WATTS GUERRA has, and again does, object
15 to the hearsay contained within the KQED article. As such, this Court should not take judicial
16 notice of the article. *Chatman v. Early*, 2009 WL 837466, at *5 (denying judicial notice of two
17 newspaper articles as they "do not contain adjudicative facts relevant to the instant action and
18 constitute inadmissible hearsay").
19
20

21 District courts in the Northern District of California generally have denied requests to take
22 judicial notice of newspaper articles as being not proper under Rule 201(b). *See Igbonwa v.*
23 *Facebook, Inc.*, 2018 WL 4907632, at *3, n. 5 (N.D. Cal., Oct. 9, 2018) (refusing various articles
24 as to the issue of whether Facebook and Mark Zuckerberg are "publishers" because neither
25 requirement of Rule 201 is satisfied); *Vinson v. Cal. Dept. of Corr. & Rehab.*, 2014 WL 4594208,
26 at *2 (N.D. Cal., Sept. 15, 2014) (refusing *Los Angeles Times* and *ContraCostaTimes.com* articles
27 under Rule 201); *Goodfellow v. Ahren*, 2014 WL 1248238, at *4 (N.D. Cal., Mar. 26, 2014)
28

1 (refusing an Associated Press article as not "subject to judicial notice pursuant to Rule 201 of the
2 Federal Rules of Evidence); *Brockington v. J.P. Morgan Chase Bank, N.A.*, 2009 WL 1916690, at
3 *7 (N.D. Cal., July 1, 2009) (denying judicial notice of an article as not proper under Rule 201(b));
4 *Ekdahl v. Ayers*, 2008 WL 4344314, at *3 (N.D. Cal., Sept. 22, 2008) (denying judicial notice of
5 two articles "because the articles and statements therein do not qualify for judicial notice under
6 Rule 201."). *See generally Planet Drum Foundation v. Hart*, 2017 WL 4236932, at *5, n. 6 (N.D.
7 Cal., Sept. 24, 2017) (refusing Wikipedia page under Rule 201, noting "[n]umerous courts have
8 held that Wikipedia pages are not sufficiently reliable to meet the requirement of Rule 201(b)(2).")
9 (citations omitted).

11 Because the United States Court of Appeals for the Ninth Circuit has explained that a court
12 make take judicial notice of publications to indicate what was in the public domain, but not whether
13 the content of the publications is true, *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592
14 F.3d 954, 960 (9th Cir. 2010), courts in this district have held that "to the extent the court can take
15 judicial notice of press releases and news articles, it can do so only to 'indicate what was in the
16 public realm at the time, not whether the contents of those articles were in fact true.'" *Spitzer v.*
17 *Aljoe*, 2016 WL 3275148, at *4 (N.D. Cal., June 15, 2016) (citing *Von Saher*). *See also*
18 *Werdebaugh v. Blue Diamond Growers*, 2014 WL 7148923, at *4 (N.D. Cal., Dec. 15, 2014)
19 (refusing articles because "to the extent Defendant disputes the basis of the conclusions and 'facts'
20 contained in these articles, the Court concludes that these facts are not appropriate for judicial notice
21 under Rule 201(b).").

24 Furthermore, GOWINS has failed to demonstrate how the article meets the requirements of
25 Rule 201; consequently, judicial notice should be denied. *See Gee How Oak Tin Nat'l Benev.*
26 *Assoc. v. Gee How Oak Tin Assoc. of North America, Inc.*, 2013 WL 1191264, at *2 (N.D. Cal.,
27 Mar. 21, 2013) ("Plaintiff has not explained how any of the documents meet this standard. The
28

1 Court does not take judicial notice of any of these documents.”); *Hardison v. Newland*, 2003 WL
2 23025432, at *15-16 (N.D. Cal., Dec. 17, 2003) (refusing article published in the *Monterey Herald*,
3 because regarding the burden required under Rule 201, the Petitioner "cannot meet this burden ...").
4 GOWINS has filed only a one-sentence request for this Court to take judicial notice of a news
5 article; that is not meeting her burden to prove application of Rule 201.
6

7 Finally, the single case cited by GOWINS in support of her motion is distinguishable. *Patel*
8 *v. Parnes*, 253 F.R.D. 531 (C.D. Cal. 2008) relates to analysts’ reports about a company’s activities,
9 not to newspaper reports concerning statements of third-parties such as the one before the Court
10 here. Importantly, the *Patel v. Parnes* court noted as well that “[w]hile the court agrees with
11 plaintiffs that the analyst reports may not be judicially noticed for the truth of the matters contained
12 therein, it is appropriate to consider them for the purpose for which defendants offer them—i.e., to
13 show “whether and when information was provided to the market.” *Id.*, 253 F.R.D. at 548. The
14 reasons the two articles were “appropriate to consider” in *Patel* simply are not present here.
15

16 In conclusion, this Court should deny the Request for Judicial Notice.

17 Respectfully submitted,

18 Dated: June 1, 2020

WATTS GUERRA LLP

19
20 By: /s/ Mikal C. Watts
Mikal C. Watts (*pro hac vice*)

21 *Attorney for Numerous Wild Fire Claimants*
22
23
24
25
26
27
28